

IN THE SUPREME COURT OF NEW ZEALAND

SC 63/2011  
[2011] NZSC 94

BETWEEN YOLANDE ELISABETH MARK & ORS  
Applicants

AND THE ATTORNEY-GENERAL OF NEW  
ZEALAND  
First Respondent

AND THE CHIEF EXECUTIVE OF LAND  
INFORMATION NEW ZEALAND  
Second Respondent

AND NEW ZEALAND TRANSPORT AGENCY  
Third Respondent

AND KAPITI COAST DISTRICT COUNCIL  
Fourth Respondent

Court: Blanchard, Tipping and William Young JJ

Counsel: J B M Smith and W L Aldred for Applicants  
C R Gwyn and J R Burns for First and Second Respondents  
B A Scott and G K Rippingale for Third and Fourth Respondents

Judgment: 23 August 2011

---

**JUDGMENT OF THE COURT**

---

**The application for leave to appeal is dismissed with costs of \$2,500 to each of the first and second respondents (jointly) and the third and fourth respondents (jointly).**

**REASONS**

[1] The applicants' proposed appeal has no merit. They seek to raise what is fundamentally a factual question which could properly have been resolved against them under either s 40(1)(a) or (1)(b) of the Public Works Act 1981. We agree with

the Court of Appeal<sup>1</sup> that this was not a suitable case for a stepped approach and with the High Court<sup>2</sup> (and the provisional view of the Court of Appeal) that the subject land continued to be required for an essential work despite the financial standoff between the National Roads Board and the local authority. The land in question was all along wanted for a major road. The only matter in doubt was who would build it and how it would be paid for.

[2] When the factual position is realistically appraised, we find it somewhat surprising that the case was brought in the first place – apparently for the benefit principally of a developer who thought fit to acquire any rights of the nominal plaintiffs.

Solicitors:

Paul Cassin, Auckland for Applicants

Crown Law Office, Wellington for First and Second Respondents

Chapman Tripp, Wellington for Third and Fourth Respondents

---

<sup>1</sup> *Mark v Attorney-General* [2011] 2 NZLR 538, [2011] NZCA 176.

<sup>2</sup> *Mark v Attorney-General* HC Wellington CIV-2002-485-799, 27 October 2009.